

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 2212 OF 2004

Office Notes, Office Court's or Judge's orders
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Mr. S.R. Redkar for the petitioners.

CORAM : H.L. GOKHALE, J.

DATE : 28TH JUNE, 2006

P.C.

. Heard Mr. Redkar in support of this petition. The respondent herein is a Cooperative Housing Society. The respondent is duly served and the affidavit of service of the petitioners' Advocate has been duly filed, which shows that the petition has been served on the Advocate of the respondents, who has in fact filed a caveat. He is not present, though his name is notified on the board. This petition had come up earlier on 6th of September, 2005, when another Single Judge issued notice to the respondents

that on the returnable date the matter will be disposed of finally at the admission stage. That notice has been given and since nobody is present for the respondents, I am proceeding with the matter.

2. The respondent- Cooperative Society filed the dispute to recover certain amount from the petitioners. That was case No. CC/III/478/2000 filed in the III Cooperative Court at Mumbai. The petitioner having been served a dispute, the petitioners' Advocate filed an application on 23/1/2001 stating that a copy of the dispute application was not received and only the notice had been received. The petitioners merely stated that after furnishing a copy of the application of the dispute, a reply will be filed. The learned Judge of the Cooperative Court still decided to proceed with the matter ex-parte. Such a noting was made on 3rd November, 2001.

The petitioners' Advocate applied that the said noting be recalled and the matter be taken up on merit.

3. Mr. Redkar appearing for the petitioners points out that apart from the other things, the petitioners have a good case even on limitation, in as much as the loan appears to have been advanced in the year 1993, whereas the dispute is filed in 2000. Still the Cooperative Court proceeded ex-parte and the application not to proceed ex-parte was rejected by passing an order on 16th March, 2002. Thereafter the learned Judge on the same date decreed the Dispute Application by passing the judgment and award.

4. Being aggrieved by the order, the petitioners filed an appeal in the Cooperative Appellate Court. The appeal is to be filed within 60 days, though unfortunately, it appears that there was

a delay of about 4 months in filing the appeal and the application for condonation of delay was filed and that was served on the respondent. This Misc. Application for condonation being No. 272 of 2002 has come to be dismissed by the impugned order passed on 31/1/2003.

5. Mr. Redkar has shown me the application for condonation of delay. The applicant the petitioner herein, in her application states that the certified copy of the trial Court's order is received on 10th July, 2002. The application is filed on 22nd November, 2002. Even if their period is excluded there is a delay of about 70 days thereafter. What I find is that the 1st petitioner is a house wife and she has taken a small loan of Rs. 5000/- because of the family circumstances. As stated by Mr. Redkar, surely the merit of the appeal has to be gone into particularly when as pointed out above the trial Court

has proceeded ex-parte without giving the proper opportunity to the petitioners. The petitioners have a good case on merits and the Co-operative Society should have been compensated by awarding some amount of costs. The impugned order has resulted into a material irregularity and serious prejudice. For this reason alone, I interfere with the order passed by the learned Judge dismissing the delay condonation application. The Judge is required to see the merits of the application as well as consider the submissions.

6. In the circumstances, I allow this petition and set aside the order dated 31/1/2003. Mis. Application No.272/2002 for condonation of delay will stand allowed and the appeal filed by the petitioners will be numbered. This will, however, on payment of costs of Rs. 750/- by the petitioners. The costs will be paid within two weeks and thereafter

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the Appellate Court will take the appeal
for consideration after 4 weeks.

. Petition disposed of.

(H.L GOKHALE, J.)